

# Historians on Trial

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On 9 February 2021, the District Court in Warsaw ruled that two prominent Holocaust researchers must publicly apologize for statements published in a book about the extermination of Jews in Nazi Germany-occupied Poland during the Second World War. Professor [Jan Grabowski of the University of Ottawa](#) and Professor Barbara Engelking, who heads [the Polish Center for Holocaust Research of the Polish Academy of Sciences](#), were sued in a personal rights infringement case for stating in a book that mayor Edward Malinowski was co-responsible for the death of Jews in Malinowo committed in 1943 by Nazi Germans and that he robbed a Jewish woman of her possessions.

Filomena Leszczyńska, an 80-old niece of the mayor, brought the case. She claimed that some statements in a 1,700-pages anthology [Night Without an End. The Fate of Jews in Selected Counties of Occupied Poland](#), are incorrect and defamed her deceased uncle, consequently infringing upon her personal rights, protected in Article 23 and 24.1 of the Civil Code). She demanded 100 thousand zlotys compensation (around 20.000 Euros) and a public apology. The lawsuit is an example of strategic litigation aimed at intimidating researchers and exercising a chilling effect on the debate in Poland due to the involvement of an organization close to the government and framing of the case in pro-government public and private media.

In recent weeks, courts in Poland handed judgments in two other important Strategic Lawsuit Against Public Participation (SLAPP) cases brought on criminal charges. On 2 March 2021, a court of first instance in Płock [acquitted](#) three activists accused of infringing upon religious feelings of a Catholic priest for displaying stickers with a picture of a religious icon, Virgin Mary with Child, adorned with a rainbow halo in LGBT flag colors.

A couple of days later, on 5 March 2021, a court in Warsaw [found](#) professor Wojciech Sadurski, the Challis Chair of Jurisprudence at the University of Sydney, not guilty of criminally defaming Polish state television TVP. A civil defamation charge against him remains ongoing. Against this background, the case against professor Engelking and professor Grabowski remains a powerful example of how civil law instruments can be used against independent researchers critical of government policies in Poland.

## Historians' reputation on trial

Ms. Leszczyńska received advice and support from Reduta Dobrego Imienia (Polish Anti-Defamation League). The organization's head Maciej Wierński [admitted](#) he traveled to Malinowo and told her about statements in the book concerning her uncle. The governing coalition's politicians' publicly [criticized](#) the anthology's

editor and author, arguing they unjustifiably and malevolently attributed to some Poles complicity in the extermination of Jews. During the trial, the claimant's lawyer [argued](#) that Engelking and Grabowski made methodological mistakes when compiling the anthology.

Professor Engelking refuted those claims and testified she based her account on documents and testimonies recorded after the war and available, among others, in the USC Shoah Foundation. In 1948 a dozen of Malinowo residents informed the prosecution about the mayor's collaboration with Nazi Germans. Mr. Malinowski stood trial in 1949-50. During the trial, some witnesses were beaten and harassed and changed their testimonies. The mayor was acquitted.

Leading [international](#) media covered the case extensively. The case attracted international attention in the context of deliberate, systemic dismantling of the [rule of law](#) in Poland, including, notably, through weakening of guarantees to judicial independence. The judicial independence concerns recently led courts in other EU member states to suspend and reject executing [the European Arrest Warrant](#) to Poland over fair trial concerns. However, Professor Engelking and Professor Grabowski did not raise the fair trial concerns, perhaps counting that similarly to other high-profile SLAPP cases in Poland, including [those against professor Wojciech Sadurski](#), the judge would withstand political pressure and rule in line with human rights law standards on freedom of expression.

## **The court rules historians to apologize**

In the ruling, the District Court in Warsaw focused on the claimant's personal right to remember family members in a certain way. According to the court, the disputed statements in the book slandered the reputation of the claimant's uncle. Consequently, the court ruled that Professor Engelking and Professor Grabowski must post a statement on the Polish Institute for Holocaust Research's website and apologize to Ms. Leszczyńska in a letter for slandering her uncle by 'providing inaccurate information' in the book. Moreover, the court ordered that the disputed passages must be corrected in the next editions of the anthology.

The court rejected the demand that the historians admit they had intentionally given untruths in their book and wanted to accuse Poles of involvement in the extermination of Jews. The court also rejected a financial demand that the historians pay 100,000 zlotys compensation, arguing that it would negatively affect academic research in Poland. The defendants, represented by Dr. Michał Jabłoński, announced they would appeal against the ruling. Dr. Aleksandra Gliszczyńska-Grabias, who coordinates the historians' defense, stressed that if needed, the case will find its final in the European Court of Human Rights.

## **A Strategic Lawsuit Against Public Participation**

The case falls under the [Strategic Lawsuit Against Public Participation](#) criteria. SLAPPs are [defined](#) as "groundless or exaggerated lawsuits and other legal forms of

intimidation initiated by state organs, business corporations and individuals in power against weaker parties”. They are filed to [“intimidate, induce fear, tire, and consume the target’s financial and psychological resources”](#) and also to have a chilling effect on public debate.

In the discussed case, the claimant, an older woman living in a remote village, in a general perspective is a weaker party in the dispute against two internationally renowned professors with vast cultural capital and a [global support network](#). However, that claimant benefitted from comprehensive support, including legal aid, from a government-approved organization, Reduta Wolnego Imienia. Moreover, [state](#) and [pro-government media](#) in Poland have lashed out against the defendants, undermining their professional credibility and personal ethics.

After the verdict was announced, the powerful [justice minister and prosecutor general Zbigniew Ziobro](#) immediately commented the ruling on [Twitter](#): ‘Ms. Filomena Leszczyńska proved in court the manipulation of B. Engelking and J. Grabowski, who in their book *Night Without an End* slandered her uncle for giving Jews to death, although he was hiding them. This brave woman stood up to the false propaganda slandering Poles!’. Such statements by the Minister of Justice/ Prosecutor General put pressure on the Court of Appeal.

## **A case against a cultural current**

The judgment in Engelking/Grabowski case is a gift for the current right-wing government in Poland and its allies in media and civil society. It has been instrumentalized to purport that those who discuss Poles’ role in the extermination of Jews in a way that does not fall within the government-approved narrative, are not credible researchers, but biased ideologues, whose work is mere propaganda that has nothing to do with a search for ‘the truth’.

In even broader terms, the Engelking/Grabowski case is a case against an important and celebrated – also outside of Poland – current of contemporary Polish culture. Right-wing politicians and commentators in Poland use the term [‘pedagogy of shame’](#) to express a contempt for some works of contemporary Polish culture (and their authors), that in their view, ‘attempt at lowering Poles’ self-esteem by taking away from them the pride of the past, especially ones related to a fight and martyrdom in the Second World War’, as a [commentator](#) of a prominent pro-government online portal put it.

Jan Tomasz Gross’s, Jan Grabowski’s and Barbara Engelking’s books, Paweł Pawlikowski’s Oscar-winning movie *Ida*, and a philosopher Andrzej Leder’s important essay [Sleepwalking through a Revolution](#) are frequently described in the right-wing info-sphere as representing such attitude. Paradoxically, Leder attempted to explain deep-rooted reasons for today’s Poles’ anxieties, denials, and taboos, including those related to the past and history.

However, the examples of 'pedagogy of shame' are not limited to works that discuss the Holocaust and relations between Poles and Jews. Any new reading of historical figures and Poland's past can be described as a form of 'pedagogy of shame'. For instance, demonstrating that composer Fryderyk Chopin wrote passionate, homoerotic [letters to his male friend](#). Or retelling religious and peasant leaders, as a Nobel Prize laureate [Olga Tokarczuk](#) and a prestigious Nike Award winner Radek Rak recently did. A right-wing weekly Do Rzeczy put both writers on the cover with the headline 'A Revenge against Poland'. What some perceive as a 'pedagogy of shame', others call 'a critical patriotism'. Forty years ago, Jan Józef Lipski, outlined two attitudes to national history in a famous essay [Two Fatherlands, Two Patriotisms](#). He distinguished between 'a critical patriotism' instead of a non-critical one which insists on Poles' historical virtue.

Today, space for critical patriotism in Poland is shrinking. Most states, to an extent, use the law to promote specific historical narratives. This issue was explored at length in 2018 in a [joint symposium of the T.M.C. Asser Institute \(The Hague\) and Verfassungsblog](#) on memory laws. Nevertheless, from the human rights perspective, the problem with the current Polish government's historical policy lies in various attempts to limit the right to freedom of expression and the right to conduct and disseminate results of scientific research, when they challenge a simplistic, selective, and at times misleading, official state narrative about Poles' attitudes and actions towards other Poles and Jews, Ukrainians, Belarusians, Lithuanians, and other minorities.

The ruling in Engelking/Grabowski case is highly consequential and may have a wide-ranging impact on human rights standards in Poland. It may intimidate researchers and students from conducting research on specific aspects of Poland's past, normatively interpret collected data, and popularize research and participate in public debates. Academic journals and collected volumes' editors may fear to be held accountable for contributor's research findings, while in principle authors' are responsible for the presented work. Uladzislau [Belavusau and Aleksandra Gliszczynska-Grabias](#) suggest using a term 'mnemonic constitution' to describe an ideological foundation for non-liberal democracies that justifies the current political choices of governments in Poland and Hungary.

After the United Right coalition was elected to power in 2015, it has renewed interest in protecting specific historical narratives, often characterized as the 'historical truth'. First, lawmakers in Poland intended to achieve it by adopting in January 2018 [a new controversial memory law](#), the so-called Holocaust bill. This attempt spectacularly backfired: the most politically contentious parts of the law were repealed in a legislative procedure in June 2018 and following the (politically captured) Constitutional Tribunal's ruling in January 2019. Then hopes remained that what could not be achieved with criminal law, can be achieved with means of civil liability system. Engelking/Grabowski case is a result of such thinking.

## Conclusion

Due to the involvement of a government-approved NGO in the proceeding, a private civil law lawsuit against Professors Barbara Engelking and Jan Grabowski related to the content of their book about the killing of Jews in Poland was an example of the Strategic Lawsuit Against Public Participation that aimed at discrediting the professional reputation of the researchers and exercising a chilling effect on the public debate about the past and history in Poland. The case was decided not on the freedom of expression argument, but on the personal rights argument. The court emphasized that personal rights include the right to the memory of the deceased and recognized [pride in one's nation as a protected value](#). It also recognized the equal responsibility of both the author of the article and the anthology's editor for the published content. The court sentenced Professor Engelking and Professor Grabowski to apologize to the claimant and modify the impugned article's content in future editions of the book. The judgment is highly consequential for the freedom of expression and freedom of academic research in Poland in the light of other trends in the current Polish right-wing government historical policy and science policy.

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